

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY

and

Case 19-CA-32431

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS DISTRICT LODGE 751, affiliated
with
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS

**THE BOEING COMPANY'S RESPONSE TO THE MOTION OF THE HR POLICY
ASSOCIATION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF
RESPONDENT THE BOEING COMPANY**

Respondent The Boeing Company ("Boeing") hereby responds to Judge Anderson's June 20, 2011 Order providing the current parties with "an opportunity to submit positions" regarding the Motion to File Amicus Brief lodged by the HR Policy Association (the "Association"). Boeing supports the motion and submits that it should be granted because the Association has a direct interest in the outcome of this case, and its experience will assist this tribunal to determine whether the Acting General Counsel's requested remedy is appropriate, including whether to strike the requested remedy as Boeing requested in its motion filed June 14, 2011. The Association's request gains further support from the Board's June 20, 2011 Order granting the request of other interested parties—Dennis Murray, Cynthia Ramaker, and Meredith Going, Sr.—to intervene for the purpose of filing a post-hearing brief. *See* Order of June 20, 2011 at 3.

First, the Association is an “interested party” whose views are entitled to consideration. 5 U.S.C. § 554(c); Casehandling Manual § 10388.1. The Association’s members, who are the chief human resources officers of more than 325 of the world’s largest corporations,¹ Motion 1, face considerable uncertainty in their day-to-day operations because of the Acting General Counsel’s requested remedy—an order requiring Boeing to “operate its second line of 787 Dreamliner aircraft assembly production in the State of Washington,” instead of its current location in Charleston, South Carolina, “utilizing supply lines maintained by the [Charging Party’s bargaining unit],” instead of supply lines operated in part in South Carolina, Compl. ¶ 13(a). As the Association states, its member companies “are faced routinely with ordinary course business decisions, such as where to locate new work,” Proposed *Amicus* Brief 2, and must now make these decisions “with a risk of Board litigation” should they choose to “locate new work in non-union facilities,” Motion 2. “[F]ew companies are likely to make big capex [capital expenditure] decisions while th[is] case is pending.” *Id.* Given the unique challenges that Association members face because of the Acting General Counsel’s requested remedy—especially against the backdrop of a “hyper competitive” global economy and current pressures to “create and sustain quality employment opportunities in the U.S.,” Motion 2—these companies are “interested parties” with a

¹ As counsel for Boeing stated on the record during the hearing in this matter on Friday, June 24, 2011, although Boeing is a member of the HR Policy Association, no Boeing employees, officers, or directors are members of the HR Policy Association’s board of directors, and no one at Boeing had any connection to the HR Policy Association’s decision to file the proposed *amicus* brief or its drafting of that document. Respondent is unaware of any cases in which a court prevented a trade association from submitting an *amicus* brief solely because a member-company was a party in the case. Indeed, the frequent submission of briefs by the U.S. Chamber of Commerce, the National Association of Manufacturers, the AFL-CIO and other trade associations in cases involving their member companies or unions belies any suggestion of impropriety.

“direct interest in the outcome of the proceeding.” 5 U.S.C. § 554(c); Casehandling Manual § 10388.1.

Second, the Association is likely to provide useful information regarding the impact that the complaint and requested remedy have had (and may continue to have) on the public interest, especially the interests of businesses making expansion and hiring decisions and unemployed persons seeking new work. The Association is familiar with the current framework that U.S. businesses use to make decisions relating to the creation of new jobs. Motion 2. It has also conducted surveys identifying the determinants of job growth, including, *inter alia*, “legal certainty.” See Proposed *Amicus* Brief 2. These indications of the public’s interest are relevant equitable factors that this tribunal must consider in deciding whether to grant the relief the Acting General Counsel seeks. See *eBay Inc. v. mercExchange, L.L.C.*, 547 U.S. 388, 390 (2006); *Winn-Dixie Stores, Inc.*, 147 N.L.R.B. 788, 790 (1964) (citing *Renton News Record*, 136 N.L.R.B. 1294 (1962)).

Finally, because the Association does not seek to present or receive evidence, consideration of its *amicus* brief will not delay or otherwise adversely affect these proceedings. Consistent with the Board’s June 20, 2011 order, the “unique circumstances” of this case warrant limited intervention by interested parties for the purpose of filing post-trial briefs.

For the above reasons, the Association’s motion to file an *amicus* brief should be granted.

Respectfully Submitted,

Dated: June 27, 2011

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CERTIFICATE OF SERVICE

I certify that a copy of Respondent's Response to the Motion of the HR Policy Association to File Amicus Brief was electronically served on June 27, 2011 and sent by overnight mail to the following parties, as well as by electronic mail to those parties who have provided email addresses:

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DATED this 27th day of June, 2011

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